No. 18838

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LIMONEIRA COMPANY, a California corporation, ROGER DONLON, PAUL B. KERSTEN, and E. B. ANTONELL, et al.,

Appellants

vs.

W. WILLARD WIRTZ and ROBERT C. GOODWIN,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

APPELLANTS' REPLY BRIEF

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I. Appellees have based their arguments on matters outside the Record on Appeal.

All questions on appeal must be tried and determined by the record as certified to the Appellate Court. The record on appeal is the sole and exclusive evidence of the proceedings in the court below. The rights of the parties in an appeal proceeding must be determined on that record. 4 Am. Jur.2d 928, 929, 933; Greene v. U. S. 358 U.S. 326, 3 L.Ed.2d 340; Hooey v. Wilson 9 Wall. 501.

Therefore it was not proper for the appellees to base their arguments on appeal on alleged facts outside the record, even though some of these statements, arguments and alleged facts appear in the Congressional Record and were in fact presented to Congressional committees considering Public Law 78 and the reenactment thereof. (Appellees' Br. 5-9, 12, 20-23, 27, 30, 32, 34)

The most obvious violation of the rule against going outside the record is the inclusion of the statements made by the Secretary of Labor, the predecessor of one of the defendants in this action, in support of the actions and orders challenged in this action. (Appellees' Br. 7-10, 28) These self-serving statements and arguments of the Secretary of Labor were not presented in the trial court below under the rules of evidence, and the Secretary of Labor was not subject to cross-examination. The appellants were not given an opportunity to offer evidence in opposition to the arguments, statements and statistics presented by the Secretary. Therefore, it is highly improper for the appellees to introduce such evidence

for the first time on appeal and base their arguments thereon.

It is true that the Appellate Court may take judicial notice of certain matters not in the record of the court below, such as the acts and actions of Congress. 4 Am. Jur. 2d 934; New York Indians v. U.S., 170 U.S. 1, 614, 42 L.Ed. 927, 1165; Jones v. Merchants Natl. Bank, 76 Fed. 683. This is particularly true in the case at hand where the interpretation of an Act of Congress is involved and where the ascertainment of the Congressional intent is of vital importance.

But this does not permit the introduction by appellees of evidence such as the self-serving statements and arguments of the Secretary of Labor before Congressional committees, since such testimony has no bearing on the Congressional intent. The introduction of such material in appellees' brief and in the footnotes thereto cannot be justified on any ground.

Therefore, it is respectfully submitted that all such extraneous matter should be ordered stricken by the court and that the case be decided on the record as certified by the trial court.

Nor may the appellees properly base their arguments on appeal on the so-called wage statistics attached to the appellees' motion for summary judgment in the court below. (R. 121-155) These so-called wage statistics are referred to in appellees' brief pages 5-7, 20-22, 27, 30.

Rule 56 of the Federal Rules of Civil Procedure provides that the only evidence which may be attached to a motion for summary judgment and presented in support thereof are affidavits, and the rule sets forth specific requirements for

these affidavits. They "shall be made on personal knowledge" and "shall set forth such facts as would be admissible in evidence and "shall show affirmatively that affiant is competent to testify as to the matters stated therein". The so-called wage statistics attached to appellees' motion for summary judgment in the court below do not meet any of these requirements. They are not affidavits; it is not indicated that they are within the personal knowledge of any stated individual; and they are clearly hearsay and would not be admissible under the rules of evidence.

The requirements of Rule 56(e) as to the requirements and form of affidavits are mandatory. Sartor v. Ark. 321 U.S. 620, 88 L.Ed. 967; Bourgeois v. Chase Manhattan Bank, 139 F. Supp. 265; Roucher v. Traders, 235 F.2d 423; Zampos v. U. S. Smelting, 206 F.2d 171; Person v. U.S., 112 F.2d 1.

II. Reply to Appellees' argument that the case has not ripened into a justiciable controversy within the jurisdiction of the district court.

Appellees argue that the case before the court does not present a case, a controversy, or a justiciable issue (1) because there is no showing that the plaintiffs are about to engage in conduct contrary to the orders, (2) because there is no showing that the orders are about to enforced, and (3) because there is no substantial damage. In support of these arguments appellees have cited a number of cases.

In the case before the court the enforcement of challenged orders is direct, immediate, and automatic. Section 503(2) provides that no worker shall be available unless and

until the Secretary has made his adverse effect determination. Article 11 of the Migrant Labor Agreement provides that all employment of Mexican workers shall be governed by the terms of the Standard Work Contract. Article 13 provides that the contract must be executed at the reception center. Article 15 provides that the wage shall be the rate specified in the individual work contract, or the adverse effect rate, whichever is higher, and it provides further that the determination made by the Secretary shall be final and conclusive. Appellees admit that in order to obtain braceros in the first instance the employer must establish his eligibility and obtain the necessary authorization by complying with all of the above regulations. (Appellees' Br. 3) If he fails to do this he cannot employ braceros. If he fails to maintain his eligibility by complying with all the regulations the braceros are withdrawn. Therefore, it is sheer nonsense to argue that there is no justiciable issue because the appellants have failed to show that they are about to engage in conduct prohibited by the order or that they have failed to show that there is an immediate threat of enforcement against appellants.

Appellants have alleged (R. 4) that they are wholly or partially dependent on the use of braceros to harvest their crops. In the case of a grower who is dependent upon the use of braceros, the unavailability of braceros or their withdrawal after they have been made available could result in the loss of a crop, and it could be financially disastrous. Therefore, it is wholly unrealistic for the appellees to argue that there is

no justiciable issue because appellants have failed to show damage or threatened damage.

The case before the court comes within the purview of Columbia Broadcasting System, Inc. v. U.S., 316 U.S. 407; 86 L.Ed. 1563. This was a case in which the Columbia Broadcasting System was seeking an injunction against an order of the Federal Communications Commission. In considering whether or not there was a justiciable issue the court held:

> "The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control."

This case before the court also comes within the purview of Pierce v. Society of Sisters, 268 U.S. 510; 69 L.Ed. 1071. This was an action brought by a private school to restrain the enforcement of a law to compel all children to attend public schools. At the time the action was brought the law was not to go into effect for a period of two or three years. The plaintiff alleged that by reason of the statute and the threat of enforcement the appellants' business was being destroyed and its property depreciated. The parents and guardians were refusing to make contracts for the future instruction of the children and some were being withdrawn. The court held:

> "The suits were not premature. The injury to appellees was present and very real, -- not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the act, the injury would have

become irreparable. Prevention of impending injury by unlawful action is a well-recognized function of courts of equity."

In Public Utilities Com. v. U. S., 355 U.S. 534; 2 L.Ed. 470, the legislature of the State of California had amended the Public Utility Act to provide that the United States could not negotiate special rates with carriers within the state unless the Commission approved the rates. The United States filed an action for declaratory relief asking that the statute be declared unconstitutional. It was argued that there was no justiciable issue because the Public Utilities Commission had not yet refused to approve the rate negotiated by the United States. The court held:

"The controversy is present and concrete--whether the United States has the right to obtain transportation service at such rates as it may negotiate or whether it can do so only with state approval."

In Ex Parte Young, 209 U.S. 125; 52 L.Ed. 715, an action was taken by stockholders of a railroad to enjoin it from complying with a statute relating to rates. The action demanded of the corporate officers that they refuse obedience to the statute and should institute suits to prevent its enforcement. The question was presented as to whether on these facts a justiciable issue was presented, and the court held:

"It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

Applying the above enunciated principles to the case

at hand, it is submitted that none of the plaintiffs named or unnamed should be required to face the financial ruin which would inevitably result from an attempt to test the validity of the orders in question by refusing to pay the adverse effect rate fixed by the Secretary.

It is further observed that all of the cases cited by appellees involve questions regarding the unconstitutionality of the laws of Congress. The case before the court involves as its principal question the validity of an order of an administrative official acting under an Act of Congress. It is understandable that the courts are very reluctant to pass on the constitutionality of an Act of Congress and will do so only when presented with a clearly justiciable case or controversy. The same considerations which determine the existance of a justiciable issue in a case involving an Act of Congress do not prevail in a case involving an act of an administrative official. In such case it is submitted that the courts should be guided by the principle enunciated by the court in Stark v. Wickard, 321 U.S. 288; 88 L.Ed. 733:

> "The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction....But under Article 3, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights whether by unlawful action of private persons or by the exertion of unauthorized administrative power."

Appellees further argue that "general allegations of damage such as those made by plaintiffs clearly would not

be sufficient to establish damage for the purpose of jurisdictional amount under 28 U.S.C. 1331 or 1332." (Appellees' Br. 24) It might be noted in passing that the same arguments regarding the insufficiency of appellants' allegations of damage were made by appellees in a motion to dismiss, which was denied by the trial court. (R. 19 et seq.)

But by filing their motion for summary judgment in the trial court the appellees thereupon admitted the truth of all well pleaded allegations of fact in the complaint. Suckow Borax Mines Consol. v. Borax Consol., 185 F.2d 196.

Appellees seek to disprove the allegations of damage by use of the so-called "wage statistics" which were appended to appellees' motion for summary judgment in the trial court. However, as was pointed out elsewhere in this brief, these "wage statistics" are not properly a part of the record because they do not comply with Rule 56.

In any event, this is a representative action, and the so-called "wage statistics" do not apply to any of the unnamed plaintiffs in the action, and hence are not binding on them.

Regardless of the sufficiency of the allegation in question as to damage, jurisdiction in this case does not rest on the allegation of damage in the jurisdictional amount of $10,000. One basis of jurisdiction on which this case rests is 28 U.S.C.A. 1337, which requires no jurisdictional amount. Johnson v. Kirkland, 290 F.2d 440, 445, footnote 10.

Finally, it is observed that appellees' statement

that the Secretary "is anxious to have a ruling on the merits of this case" (Appellees Br. 17) must be regarded with a great deal of reserve. In every case, including the instant case, where the issue has been presented to the court for a decision the Secretary has raised defenses which have prevented a decision on the merits. Johnson v. Kirkland, 290 F.2d 440; Rio Hondo v. Johnson, 290 F.2d 471; McBride v. Johnson, 290 F.2d 475. In none of these cases would the Secretary have had reason to raise these defenses except for the purpose of preventing a decision on the merits.

III. Reply to Appellees' argument that the Secretary's determinations here challenged are attempts to carry out his statutory duty of insuring that employment of braceros does not adversely affect wages of domestic workers, and that this duty cannot be discharged merely by insuring that braceros are paid a prevailing wage which has been adversely affected by the very fact that braceros are available.

Exactly what constitutes the statutory duty of the Secretary and what authority was granted by Congress to discharge this duty are the issues before the court. The appellants in their opening brief undertook at considerable length to show what the Secretary's duties were and what powers had been conferred on him by Congress to enable him to discharge these duties. The appellants undertook to demonstrate how and by what method the language of Section 503 should be construed to show the Congressional intent. Appellants applied the canons of construction to the language of Section 503, to other parts of the statute and to other statutes dealing with the same subject matter, and to the long standing administrative interpretation of the Department of

Labor, to demonstrate that Congress intended that adverse effect be measured as against the prevailing wage. Appellants also went to great length to set forth the legislative history of Public Law 78 to show by the proceedings of Congress and the reports of the various committees in both the House and the Senate that the Congressional intent was to limit the Secretary to making determinations with respect to prevailing wage. These committee reports show very emphatically that Congress was greatly alarmed by the Secretary's action in undertaking to fix wages in agriculture.

Appellees concede: "The general principles of statutory construction expounded by appellants..are unexceptionable. We agree that the power of an administrative official is limited by the statute delegating the power, that an administrative official may not enlarge his statutory powers merely by issuing regulations, and that courts must construe statutes in accordance with the legislative intent and the plain meaning of unambiguous language." (Appellees' Br. 32)

But appellees nevertheless continue to argue, with respect to the Secretary's responsibilities under Section 503: "This duty cannot be discharged merely by insuring that braceros are paid a prevailing wage which has been adversely affected by the very fact that braceros are available." (Appellees' Br. 25)

In working toward this conclusion appellees concede that at first the administrative practice was to measure adverse effect as against prevailing wage, but then they say

(Appellees' Br. 27-28) that as administrative experience accumulated it became apparent that this was not sufficient and that the Secretary of Labor was compelled to act "to prevent subversion of the congressional mandate that domestic wages not be adversely affected by employment of Mexicans." (Appellees' Br. 28)

But this begs the question by assuming that there was any congressional mandate that the Secretary establish a minimum wage. It also begs the question by assuming that the Secretary was given the power to establish a minimum wage. How the appellees arrive at these conclusions is nowhere explained.

But as appellees proceed their argument reaches a climax with the assertion: "But despite the Secretary's plainly announced view of his own authority under Section 503(2) as it then existed, Congress in the course of extensive consideration of the Mexican labor program also failed to consider or pass any bill denying the Secretary such authority". (Appelles' Br. 29)

Here it becomes evident that appellees base their position on a new and unsupported principle of constitutional law that when an administrative official "plainly announces his view of his own authority" (Appellees' Br. 29) then it becomes encumbent on Congress to enact legislation denying him the authority he claims. Otherwise, the official may proceed with impunity exercising the power which he "plainly announced" that he possessed.

Appellees assert that the Secretary proceeded "at the direction of the President (Appellees' Br. 29) to meet his responsibilities by issuing the determinations here challenged. Certainly the Presidential statement quoted (Appellees' Br. 14) is not a Presidential mandate to assume the legislative function of fixing wages, but even if it were, the Presidency is not the depository of legislative authority.

Appellees' entire argument is based upon asserted facts which were not before the trial court, and which are not a part of the record, but which they nevertheless use to back up their assertion that the fixing of a wage was "necessary" in order to prevent adverse effect to the domestic wage level. But even assuming, for the purpose of argument, that they were entitled to rely on these facts, and assuming that the facts asserted are true, still an administrative official may not exercise authority just because he deems it necessary. Whether or not there should be a minimum wage in agriculture is a matter of policy which only the legislature has the authority to determine. An administrative official may not determine legislative policy, nor may he assume without an express grant of power from the legislature the authority to carry out what he deems to be the policy of the legislature.

Appellees brush aside everything appellants set forth regarding the legislative history of Public Law 78 and the congressional intent with respect thereto, with the observation: "Some members of Congress agreed with the Secretary...Others disagreed." (Appellees' Br. 28) As evidence of the ones who agreed, appellees cite Senator Mansfield and

Representative Bailey -- one Senator and one Congressman.

In support of their contentions appellees rely on American Trucking Assns. v. United States, 344 U.S. 298; 97 L.Ed. 337, and they state: "In the instant case Section 503(2) provides much more specific authority than was present in American Trucking, and the evil of depressed domestic farm wages is just as basic to the congressional intent as was the evil of trip-leasing practices at which the regulations in American Trucking were aimed." (Appellees' Br. 31) American Trucking does not sustain appellees' argument at all, and the differences between that case and the instant case are very clear. In American Trucking the Interstate Commerce Commission had undisputed regulatory authority over interstate trucking. This authority was not questioned. The regulations which were challenged were aimed at the practice of trip-leasing which were resorted to for the purpose of evading regulation. The rules promulgated by the Commission were for the purpose of preventing this evasion or subversion of the regulatory scheme of the Motor Carrier Act. The Supreme Court held the Commission had implied authority to promulgate regulations aimed at a practice which was used to evade or subvert the control over interstate trucking, which the Commission undeniably had. In the case before this court the Secretary of Labor is not given any control whatsoever over farm wages, or in fact over any wages, since this is strictly a legislative function. There is no reason or excuse for the Secretary to undertake to regulate farm wages other than his own asserted belief that the fixing of wages is "necessary".

Appellees argue: "Section 503(2) does not give the Secretary a roving license to fix minimum wages, even on the farms on which braceros are employed. Section 503(2) merely gives the Secretary the authority to combat a specific problem that worried Congress -- the adverse effect of braceros on domestic farm wages." (Appellees' Br. 34-35) This is tantamount to arguing that the de minimus rule applies to pregnancy.

Appellants never argued that the issue before this court was adjudicated in either Johnson v. Kirkland, 290 F.2d 440, or in Dona Ana Co. Farm & Livestock Bur. v. Goldberg, 200 F. Supp. 210; but appellants contend that the dicta in both of these cases clearly and unmistakably support their position. The quotation in appellants brief on page 35 was not a summary of plaintiffs' argument, and this is evident from the fact that this same quotation appears in Dona Ana at page 214, wherein the court points out:

> "As noted by the Court in the case of Johnson v. Kirkland, 290 F.2d 440 (5th Cir.,1961), cert. den. 368 U.S. 889, 82 S.Ct. 142, 7 L.Ed.2d 88 (1961), the interaction of elements (1), (2) and (3) of Section 503 of the Act appears to necessarily relate to the current prevailing domestic wage rate"

It is further pointed out that in the Dona Ana case, which came after the Kirkland case which is referred to therein, the Secretary of Labor agreed: "the Secretary of Labor is not authorized directly to fix wages under the Agricultural Act, but is only empowered to determine the actual prevailing wages paid to domestic workers in the area of employment which must be paid to Mexican National farm workers performing the same activity in the same area of

employment." (Dona Ana v. Goldberg supra)

The only issue decided in the Dona Ana case was that "there are no restrictions on the Secretary's power to determine what the current prevailing domestic wage rate is at any one time contained therein." (Dona Ana v. Goldberg supra)

IV. Reply to Appellees' argument that the authority delegated by Congress to the Secretary to determine the circumstances in which employment of Mexican workers would adversely affect the wages and working conditions of domestic agricultural workers similarly employed does not constitute an unlawful delegation of legislative power.

Appellants argued in their opening brief that if Congress intended to give the Secretary of Labor the authority to fix wages in agriculture, then such grant of legislative authority was an unconstitutional delegation of legislative authority. In support of their arguments appellants cited and analyzed all of the leading cases on this point, including Schechter v. United States, 295 U.S. 495, 79 L.Ed. 1570; Panama Refining Co. v. Ryan, 293 U.S. 388, 79 L.Ed. 447, and Opp Cotton Mills v. Administrator, 312 U.S. 126, 85 L.Ed. 624. In these cases the Supreme Court has set forth the principles which govern such delegation of authority, and by reference to these cases and authorities the appellants showed why the complete absence of any standards in Section 503(2) rendered the section invalid. Appellees brushed aside all of these arguments with the bland assertion: "The statute lays down a standard--adverse effect--which is considerably more definite than the standards which were held to be sufficient delimitations of delegated authority in Opp Cotton Mills v. Administrator... the case relied on by appellants." (Appellees' Br. 38)

Appellees' argument then boils down to this: That there is a delegation of legislative authority to the Secretary of Labor to fix wages and that the standard laid down for the Secretary's guidance is "adverse effect". The sole issue then before the court is whether "adverse effect" is a sufficient standard within the rule laid down by the Supreme Court in Opp Cotton Mills v. Administrator, and the other cases cited above. It is submitted that it is not a sufficient standard, particularly in view of the admission by appellees that "However, lacking any reasonable method of ascertaining exactly what domestic agricultural wages would be in the absence of braceros, the Secretary took for his standard existing state and national averages." (Appellees' Br. 31) This is an admission of the fact that there is no adequate standard set forth in Section 503(2) and that the Secretary of Labor was greatly perplexed in his effort to find one.

Since the interpretation urged by appellees would result in an unconstitutional statute, then it is submitted that the court must adopt the interpretation urged by appellants which would render the statute valid, but the orders invalid. NLRB v. Jones & Laughlin, 301 U.S. 1, 81 L.Ed. 893; Federal Trade Com. v. American Tobacco, 264 U.S. 298, 68 L.Ed. 696.

Appellees argue further: "Congress has seen fit to give administrative officials authority to fix minimum wages, subject only to standards much broader than the 'adverse effect' standard of Section 503(2)." (Appellees' Br. 39) Appellees' reference is to 29 U.S.C.A. 206, which gives the Secretary of

of Labor the authority to fix certain minimum wages in Puerto Rico and the Virgin Islands, and 7 U.S.C.A. 1131(c)(1) which gives the Secretary of Agriculture the authority to condition payments upon the payment of wages which he finds to be "fair and reasonable". However, before making these statements appellees have failed to examine fully the statutes to which they refer. 29 U.S.C.A. 205 and 29 U.S.C.A. 208 provides for the setting up of special industry committees for detailed procedures to be followed in making the so-called wage orders. Reading the entire statute, and not just the lines referred to by appellees, makes it clear that detailed standards are fixed by Congress. In the case of 7 U.S.C.A. 1131 appellees have extracted out of context just a part of the statute in question, whereas a reading of the entire section shows that the Secretary, in making the determinations as to what is fair and reasonable, is required to give due notice and an opportunity for public hearing, and he is required to take into consideration "the standards therefor formerly established by him under sections 601-608, 608a-608c, 608d-612, 613-619, 620, 623, and 624 of this title". The sections referred to and the regulations established thereunder were known to Congress at the time 1131(c)(1) was enacted, and they therefore establish the necessary standards. These statutes fully comply with the principles laid down in Schechter v. United States, Panama Refining Co. v. Ryan, and Opp Cotton Mills v. Administrator.

CONCLUSION AND SUMMARY

In conslusion, and by way of summary, appellants submit:

1. Appellees have failed to meet headon the issues raised by appellants in their opening brief. Appellees' brief is notable not so much for what they say as by what they fail to say in answer to appellants' arguments.

2. Appellees not only fail to meet head on the issues raised by appellants, but seek to sidestep the issues and avoid a discussion on the merits by arguing that there is no justiciable issue, while at the same time they assert "the Secretary is anxious to have a ruling on the merits of this case". (Appellees Br. 17)

3. The major thrust of appellees' arguments is that the challenged orders were "necessary" to enable the Secretary to carry out the congressional mandate. Appellees, however, fail to say how they conclude that there was a congressional mandate to fix wages in agriculture, or how the Secretary's notion of what is "necessary" is the proper measure of his authority.

4. Appellees' arguments of the "necessity" of an adverse effect wage are based in part on evidence outside the record and in part on the so-called "wage statistics" which are not properly a part of the record because they do not comply with Rule 56 of the Federal Rules of Civil Procedure.

5. Appellees' arguments ultimately rest on some vague and nebulous concept completely unsupported by any judicial authority that the Secretary's belief in the "necessity"

of a certain course of action is sufficient authority for him to act and that Congress's failure to enact legislation to curb "the Secretary's plainly announced view of his own authority under Section 503(2)" (Appellees' Br. 29) sustains his subsequent actions.

6. Appellees believe that the interpretation of Section 503(2) is not to be resolved by the language thereof, by the initial administrative interpretation, or by the legislative history, but rather is to be determined by reference to certain extraneous facts, such as the so-called wage statistics or statements by the Secretary of Labor and others which indicate the "necessity" for such actions.

7. Throughout their brief, and indeed throughout the whole history of their administration of Public Law 78, appellees seem to be motivated by the belief that the Secretary of Labor, and not Congress, determines the policy behind the law, and that the Secretary's power and authority thereunder is to be determined by the Secretary's conclusions as to the policy which should be pursued.

8. It is evident that appellees admit that the orders in question constitute the fixing of wages in agriculture (Appellees' Br. 38-39), but they take the position that such authority was given to the Secretary of Labor by Section 503(2) and that it is a valid grant of legislative authority under sufficient and proper standards set forth by Congress. To sustain this position appellees must necessarily come within the rules laid down by the Supreme Court in Schechter

v. United States, 295 U.S. 495, 79 L.Ed. 1570; Wichita v. Public Utilities Com., 260 U.S. 48, 67 L.Ed. 124; Panama Refining Co. v. Ryan, 293 U.S. 388, 79 L.Ed. 447; and Opp Cotton Mills v. Administrator, 312 U.S. 126, 85 L.Ed. 624. This they have failed to do.

9. Finally, the interpretation urged by appellees would necessarily result in the court declaring Section 503(2) unconstitutional because it was a delegation of legislative authority without proper standards. For this reason it is submitted that the court must adopt the interpretation urged by appellants, which would render the statute valid, but the orders invalid.

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CERTIFICATE

I certify that in connection with the preparation of this brief I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with these rules.

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